

Message Text

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FM AMEMBASSY BONN

TO SECSTATE WASHDC 5847

INFO USMISSION USBERLIN

AMEMBASSY BERLIN

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C O N F I D E N T I A L SECTION 01 OF 03 BONN 01111

E.O. 11652: GDS

TAGS: PFOR PGOV WB GW UR US UK FR

SUBJECT: FRG-SOVIET LEGAL ASSISTANCE ARRANGEMENT

REFS: (A) STATE 9718; (B) BONN 20119

BEGIN SUMMARY. ALLIED VIEWS ON HOW TO HANDLE THE FRG-SOVIET LEGAL ASSISTANCE ARRANGEMENT HAVE NOW BEEN PRESENTED TO THE FRG REPS IN THE BONN GROUP. US REP EXPLAINED US PREFERENCE FOR TREATING THE ARRANGEMENT AS AN "AGREEMENT" AND OUTLINED THREE OPTIONS FOR MAKING THIS POSSIBLE. UK REP SAID ANY OF THESE OPTIONS, IF ACHIEVABLE, WOULD BE ACCEPTABLE TO THE UK. UK WOULD ALSO BE PREPARED TO TREAT THE ARRANGEMENT AS A "NON-AGREEMENT" AND TO LIMIT ALLIED ACTION TO APPROVAL OF THE INTERNAL REGULATIONS WHICH WOULD BE PROMULGATED TO IMPLEMENT THE AGREED PRACTICES IN BERLIN. FRENCH REP STATED THAT FRANCE VIEWED THE PACKAGE AS AN AGREEMENT FOR BERLIN PURPOSES. BOT BRITISH AND FRENCH REPS, IN STRONGER TERMS THAN US REP, STRESSED THE IMPORTANCE OF

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PREVENTING THE SOVIETS FROM NOTIFYING THE THREE ALLIES

OF THEIR UNILATERAL STATEMENT CONCERNING BERLIN.

FRG REPS THOUGHT IT MOST UNLIKELY THAT ANY CHANGES IN THE SCENARIO COULD BE ACHIEVED, AS SOVIETS HAD ADAMANTLY REFUSED ANY LINKAGE BETWEEN THE ARRANGEMENT CONCERNING THE FRG AND THAT CONCERNING BERLIN. BONN GROUP DISCUSSION WILL BE CONTINUED WHEN FRG PROVIDES A MORE DETAILED REACTION TO ALLIED POSITIONS. NO FURTHER GUIDANCE IS REQUIRED AS YET, BUT WE REPORT THIS FIRST FULL BONN GROUP DISCUSSION FOR THE RECORD. END SUMMARY.

1. PENDING FRG-SOVIET NEGOTIATIONS ON HANDLING REQUESTS FOR LEGAL ASSISTANCE WERE DISCUSSED TRIPARTITELY ON JANUARY 19 AND IN THE BONN GROUP ON JANUARY 20.

2. WHILE THERE IS STILL NO CONSENSUS AMONG THE ALLIED REPS ON HOW TO VIEW THE PROPOSED ARRANGEMENT (AND THEREFORE ON WHAT AK ACTION WOULD BE REQUIRED FOR ITS IMPLEMENTATION IN BERLIN), ALLIED REPS AGREED IT WOULD NEVERTHELESS BE USEFUL TO PRESENT CURRENT THINKING TO FRG SO THAT GERMANS COULD ALSO BEGIN WEIGHING THE ALTERNATIVES AS THE ALLIES SEE THEM.

3. IN BONN GROUP MEETING US REP STRESSED ONCE MORE THAT US WOULD WELCOME A BREAKTHROUGH WHICH WOULD PERMIT PRACTICAL ARRANGEMENTS FOR HANDLING LEGAL ASSISTANCE REQUESTS WHILE PERMITTING ALL CONCERNED TO PRESERVE THEIR LEGAL POSITIONS. HE EXPLAINED WHY US CONSIDERED IT PREFERABLE TO TREAT THE ARRANGEMENT AS AN AGREEMENT FOR BERLIN PURPOSES AND OUTLINED THREE POSSIBILITIES FOR DOING SO IN ACCORDANCE WITH PARA 2, REF (A):

A. OPTION 1 (REWORDING OF STATEMENTS): THIS WOULD INVOLVE A CHANGE IN THE SECOND SOVIET STATEMENT TO ESTABLISH A CLEAR LINKAGE BETWEEN THE ARRANGEMENTS FOR BERLIN AND THOSE AFFECTING THE FRG.

B. OPTION 2 (REORDERING): HAVE SOVIET AMBASSADOR FALIN MAKE BOTH OF HIS STATEMENTS FIRST AND THE FRG ITS SINGLE DECLARATION AFTERWARDS, CONFIDENTIAL

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THUS MAKING IT CLEAR THAT THE FRG DECLARATION RELATED TO BOTH SOVIET DECLARATIONS.

C. OPTION 3 (REINTERPRETING): ACCEPT THE SCENARIO AS IT STANDS, BUT HAVE THE FRG CERTIFY TO THE AK THAT THE ARRANGEMENT IN ITS TOTALITY CONSTITUTES AN AGREEMENT WHICH BOTH PARTIES INTEND BE EXTENDED TO BERLIN.

4. US REP NOTED THAT AK WOULD HAVE NO DIFFICULTY IN
LOOKING AT THE PACKAGE AS A WHOLE AND INTERPRETING THE
FIVE STATEMENTS AS SET OUT IN THE SCENARIO IN PARA 5,
REF (B) AS AN AGREEMENT OR IN READING INTO THEM THE
NECESSARY INTENT THAT THE AGREEMENT BE APPLIED IN

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BERLIN. THIS OPTION WOULD BE FEASIBLE, HOWEVER, ONLY
IF THE SOVIETS DID NOT OBJECT AND WERE WILLING, IN
THE NAME OF REACHING A PRACTICAL ARRANGEMENT WHICH LEFT
UNAFFECTED THE LEGAL POSITION OF ALL PARTIES CONCERNED
TO ACCEPT IN SILENCE THE FRG CERTIFICATION TO THE AK.
US REP ALSO EXPLAINED WHY SOVIET NOTIFICATION TO THE
ALLIES WOULD BE UNDESIRABLE.

5. FRG LEGAL ADVISOR (DUISBERG) STRESSED THE
PARALLELISM OF GERMAN AND ALLIED INTERESTS AND THE

DESIRE OF THE FRG TO PRESERVE THE WESTERN LEGAL POSITION. AS A GENERAL COMMENT ON THE US PREFERENCE FOR TREATING THE PACKAGE AS AN AGREEMENT, DUISBERG SAID THERE WAS NO POSSIBILITY OF CONCLUDING AN FRG-SOVIET "AGREEMENT" ON THIS SUBJECT WHICH INCLUDED BERLIN. THE SOVIETS HAD MADE THIS CLEAR FROM THE BEGINNING. AT THE SAME TIME, DUISBERG ACKNOWLEDGED THAT THE SOVIETS MIGHT FOR THEIR PURPOSES CHOOSE TO INTERPRET THE ARRANGEMENT CONFIDENTIAL

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AS AN INTERNATIONAL AGREEMENT, AND HE DID NOT CONTEST THE US POINT THAT THE SOVIETS MIGHT CONTEND THAT THAT PORTION OF THE AGREEMENT CONCERNING BERLIN HAD BEEN CONCLUDED NOT WITH THE FRG BUT POSSIBLY WITH THE SENAT OR WITH THE THREE WESTERN ALLIES.

6. WITH REGARD TO THE FIRST US OPTION (REWORDING THE STATEMENTS), DUISBERG SAID THE GERMANS HAD FOUGHT ENDLESS BATTLES OVER TRYING TO INDUCE THE SOVIETS TO INCLUDE THE WORD "ALSO" IN FALIN'S STATEMENT CONCERNING BERLIN BUT THAT THE SOVIETS HAD ADAMANTLY REFUSED. THE FRG HAD ALSO SOUGHT LONG BUT UNSUCCESSFULLY TO ESTABLISH A LINKAGE BETWEEN THE TWO SOVIET STATEMENTS BY HAVING BOTH STATEMENTS REFER TO THE 1973 GROMYKO-SCHEEL AGREEMENT.

7. DUISBERG ALSO COMMENTED ON US OPTION TWO (REORDERING THE STATEMENTS). HE SAID THE FRG HAD SOUGHT TO ACHIEVE THE SAME PURPOSE BY INCLUDING IN THE SECOND FRG STATEMENT (PARA 5.C, REF B) WORDS TO THE EFFECT THAT THE NEW PROCEDURES "IN ACCORDANCE WITH BOTH STATEMENTS" WILL TAKE EFFECT IMMEDIATELY. THE SOVIETS HAD ALSO RESISTED THAT FRG PROPOSAL.

8. DUISBERG DID NOT COMMENT ON THE SUGGESTION (OPTION 3) THAT THE FRG MIGHT REPORT THE SCENARIO AS IT NOW STANDS TO THE AK AS CONSTITUTING AN AGREEMENT.

9. UK REP (EDWARDS) SAID THAT THE UK WOULD HAVE WEL-COMED AN ARRANGEMENT WHICH COULD CLEARLY BE TREATED AS AN AGREEMENT. REFERRING TO THE US PRESENTATION, EDWARDS SAID THAT IF THE FRG COULD CERTIFY TO THE AK THAT BOTH PARTIES AGREED THAT IT WAS AN AGREEMENT FOR EXTENSION TO BERLIN, THAT WOULD BE ENTIRELY SATISFACTORY. HE COULD, HOWEVER, SEE THAT IT WOULD BE DIFFICULT FOR THE FRG TO DO THAT.

10. EDWARDS CONTINUED THAT THE UK POSITION, IF THE FRG WERE UNABLE TO OBTAIN THE NECESSARY MODIFICATIONS TO MEET THE US SUGGESTIONS, WOULD BE TO ACCEPT THE SCENARIO AS A NON-AGREEMENT. IT WOULD VIEW IT AS AN ARRANGEMENT

WHICH DID NOT GIVE RISE TO RIGHTS AND OBLIGATIONS UNDER
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INTERNATIONAL LAW BUT SIMPLY AS A ROOF ARRANGEMENT (AS
DUISBERG HAD PREVIOUSLY REFERRED TO IT) UNDER WHICH BOTH
SIDES ADJUSTED THEIR INTERNAL PROCEDURES FOR SENDING AND
RECEIVING LEGAL ASSISTANCE REQUESTS. THE FRG WOULD NOT
SUBMIT THE ARRANGEMENT TO THE AK, BUT THE SENAT WOULD
SUBMIT THE NEW INTERNAL BERLIN REGULATIONS TO THE AK,
WHICH WOULD PROBABLY REACT IN A POSITIVE MANNER. IF,
HOWEVER, THE SOVIETS WERE TO COMMUNICATE THE FALIN
STATEMENT TO THE ALLIES THIS WOULD CAUSE DIFFICULTIES.
SUCH NOTIFICATION WOULD NOT NECESSARILY BE FATAL TO THE
WHOLE ARRANGEMENT BUT WOULD LIKELY BE.

11. ALLUDING TO THE FACT THAT FRG POLITICAL DIRECTOR
VAN WELL HAD RAISED THE SUBJECT IN ROUTINE BILATERAL
TALKS WITH HIS FRENCH COUNTERPART IN PARIS ON DECEMBER
12, THE FRENCH REP (BOISSIEU) SAID HE ASSUMED THE FRG
KNEW THE FRENCH POSITION VERY WELL. TO RECAPITULATE
BOISSIEU SAID THE FRENCH CONSIDERED THIS THING TO BE AN
AGREEMENT --IF NOT WITHIN THE NORMAL MEANING OF INTER-
NATIONAL LAW OR GERMAN INSTITUTIONAL ORDER, AT LEAST IN
THE SENSE OF BERLIN LEGISLATION. THE FRENCH WOULD BE
PREPARED TO ACCEPT ONE OR ANOTHER OF THE US PROPOSALS,
WHICH IMPLIED OBTAINING SOME CHANGE IN THE PROPOSED
SCENARIO. FINALLY, THE FRENCH WOULD "REFUSE" ANY KIND

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OF NOTIFICATION TO THE ALLIES OF THE UNILATERAL FALIN
STATEMENT.

12. BOISSIEU THOUGHT ALL FOUR OF THE SOLUTIONS WHICH
HAD BEEN SUGGESTED PRESENTED DIFFICULTIES AND FRANKLY
DOUBTED THAT ANY OF THEM WOULD BE ACCEPTABLE TO THE
SOVIETS. HE SUGGESTED THAT THE BONN GROUP SHOULD
ATTEMPT TO FLESH OUT SEVERAL POSSIBILITIES AND EXAMINE
EACH FROM BEGINNING TO END; IT WOULD BE VERY BAD TO HAVE
SETTLED ON ONE SOLUTION, ONLY TO BE REBUFFED BY
THE SOVIETS THE DAY AFTER IT WAS IMPLEMENTED.

13. DUISBERG ALSO EXPLAINED IN THE BONN GROUP
ADDITIONAL GERMAN THINKING ON THE INTERNAL MODALITIES
FOR IMPLEMENTING THE NEW ARRANGEMENT. A BODY KNOWN AS
THE CONFERENCE OF LEGAL ASSISTANCE SPECIALISTS
(RECHTSHILFEREFERENTEN), COMPOSED OF OFFICERS FROM THE
JUSTICE MINISTRIES OF THE SEVERAL LAENDER, MEETS TWICE
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YEARLY OR ON AN AD HOC BASIS TO ADOPT REGULATIONS ON
THE HANDLING OF LEGAL ASSISTANCE REQUESTS. THESE
REGULATIONS ARE IN TURN INCLUDED IN A PUBLICATION KNOWN
AS "LEGAL ASSISTANCE SYSTEM IN CIVIL MATTERS"
(ZIVILRECHTSHILFEORDNUNG), WHICH SETS OUT PROCEDURES
TO BE FOLLOWED WITH SPECIFIC COUNTRIES. THESE ARE
ADMINISTRATIVE REGULATIONS OF THE LAENDER, NOT
LEGISLATION. THE PLAN FOR THE ARRANGEMENT WITH THE
SOVIET UNION IS THAT, AS SOON AS AN UNDERSTANDING HAS
BEEN REACHED WITH THE SOVIETS ON THE SCENARIO, THE FRG
JUSTICE MINISTRY WILL GO TO THE LAENDER TO SEEK THEIR
CONSENT TO DIRECT DEALINGS WITH THE JUSTICE MINISTRIES
OF THE UNION REPUBLICS OF THE USSR. ONLY IF ALL THE
LAENDER AGREE WILL INSTRUCTIONS TO THE COURTS BE
PREPARED FOR PUBLICATION IN ZIVILRECHTSHILFEORDNUNG, AND

ONLY THEN WILL THE FRG-SOVIET EXCHANGE OF DECLARATIONS TAKE PLACE. DUISBERG AGREED TO SEEK THE ANSWER TO A QUESTION AS TO WHERE THE RECORD OF THE EXCHANGE OF DECLARATIONS WAS TO BE PUBLISHED AND WHETHER THAT PUBLICATION WAS TO BE THE TRIGGER FOR IMPLEMENTATION OF THE PREVIOUSLY PUBLISHED REGULATIONS OF THE LAENDER.

14. IN CONCLUDING THE DISCUSSION, THE SENIOR FRG REP (LUECKING) OFFERED TWO COMMENTS. HE THOUGHT THAT THE FRG STILL HAD SOME ROOM FOR MANEUVER IN SO FAR AS THE SOVIET PLAN FOR PROVIDING NOTIFICATION TO THE ALLIES WAS CONCERNED. HE PERSONALLY THOUGHT, HOWEVER, THAT IT WOULD BE IMPOSSIBLE TO OBTAIN ANY CHANGE IN THE SCENARIO. HE SAID VAN WELL HAD POINTED OUT AT THE MAY SENIOR LEVEL MEETING THAT THE SCENARIO REPRESENTED THE RESULT OF TWO YEARS WORK AND HAD ASKED THE THREE ALLIED GOVERNMENTS TO GIVE THEIR CONSENT. US REP SAID US APPRECIATED THE DIFFICULTIES BUT ASKED THAT THE FRG GIVE CONSIDERATION TO THE POSSIBILITY FOR CHANGE AS OUTLINED IN THE OPENING US PRESENTATION.

15. COMMENT. WE WILL WAIT FOR A MORE DEFINITIVE FRG REACTION TO THE ALLIED PROPOSALS BEFORE RECOMMENDING MOVING TO THE FALLBACK POSITION OF WORKING OUT A WAY TO ACCEPT THE PACKAGE AS SOMETHING LESS THAN AN AGREEMENT. HILLENBRAND
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